XI-HC

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (28)

मामला क्रमांक Cr.A. 481 सन् 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 481 OF 2001

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANT :- Sohrai Ram Rautia, S/o Shri Sitaram Rautia, aged about 30 years, R/o. Village – Dugdugia Kunkuri, P.S.- Kunkuri, Distt. Jashpur Nagar (C.G.)

Versus

RESPONDENT :- State of Chhattisgarh, Through The Police Station – Kunkuri, Distt. Jashpurnagar (C.G.)

Present:
Mr. Rakesh Pandey, counsel for the accused/appellant.
Mr. Sudhir Bajpai, Panel Lawyer for the State/respondent.

O R A L J U D G M E N T
(26th June 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 16th May 2001 passed by II Additional Sessions Judge, F.T.C. Jashpurnagar in Sessions Trial No. 93/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

for life, pay a fine of Rs.5,000/- and in default of payment of fine to further undergo imprisonment for five months.

2. Case of the prosecution, in brief, is that at about 9.30 p.m. in the night of 18.2.2000 near the house of Hariram Choudhary accused Sohrai Ram asked Jiyatbhan (since deceased) that "you are giving information to the excise department regarding his illicit distillation" and slapped deceased Jiyatbhan two-three times. Hariram Choudhary intervened in the matter, sent the accused and deceased to their respective houses. Jiyatbhan went to his house, and following him accused Sohrai Ram also reached the house of Jiyatbhan where accused Sohrai Ram saying that "you get the liquor seized by excise officers" started beating him with fists and *chappal* on his mouth and nose, as a result of which blood started oozing out from his mouth and nose. Jiyatbhan became speechless and his face was swollen. On 19.2.2000 when he was being taken to Kunkuri Hospital, he died on the way. The matter was reported by Sudhbal (PW-4) on 19.2.2000 at Police Station Kunkuri, on which merg intimation (Ex.P/6) was registered. Thereafter, First Information Report (Ex.P/5) was lodged by Sudhbal (PW-4) and offence under Section 302 of the IPC was registered under crime No. 15/2000. Receiving this report investigating officer left for the scene of occurrence and prepared the inquest (Ex.P/3) on the body of deceased Jiyatbhan. Bloodstained and plain soil were taken into possession from the place of occurrence under Ex.P/4. Dead body of Jiyatbhan was sent for postmortem to the Govt. Hospital, Kunkuri under Ex.P/10 where Dr. S. Toppo (PW-5) conducted postmortem and prepared the postmortem report Ex.P/7.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

He opined that cause of death is hemorrhagic shock due to fracture of skull bone and death was homicidal in nature.

3. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Jashpurnagar who in turn committed the case to the Court of Sessions Judge, Raigarh from where learned II Additional Sessions Judge, received the case on transfer for trial.

4. Prosecution in order to establish the charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. He examined DW-1 Nehruram, DW-2 Sharfuddin, DW-3 Etwaram and DW-4 Murarilal in his defence.

5. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Mr. Rakesh Pandey, counsel appearing on behalf of the accused/appellant and Mr. Sudhir Bajpai, Panel Lawyer for the State/respondent.

7. Mr. Rakesh Pandey, has not disputed the homicidal death of Jiyatbhan. Moreover, in view of the ocular evidence of PW-1 Surpati Bai, wife of the deceased, who has categorically stated that the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	accused attacked her husband with fists and *chappal* and the medical evidence of Dr. S.Toppo (PW-5), who conducted postmortem on the body of deceased Jiyatbhan and opined that cause of death was hemorrhagic shock due to fracture of skull bone and the death was homicidal in nature. In view of this evidence, it is established that death of Jiyatbhan was homicidal in nature. 8. As far as involvement of the accused/appellant in crime in question is concerned, Mr. Pandey has not disputed even involvement of the accused/appellant in the crime. Moreover, PW-1 Surpati Bai, wife of the deceased, has categorically stated that in the fateful night when she along with her husband was sitting in the house, accused came there and started beating her husband with fists and *chappal* as a result of which he sustained injuries. Thereafter, she took him inside the house, informed the villagers and when next day morning he was being taken to the hospital he succumbed to the injuries on the way. In the cross-examination of this witness, the defence has not been able to elicit any circumstances which discredits the evidence of this witness. The evidence of PW-1 Surpati Bai is corroborated by the medical evidence of Dr. S. Toppo (PW-5) who conducted postmortem on the body of deceased Jiyatbhan and noticed swelling on the forehead in the size of 3" x 2", fracture of frontal parietal bone, bruise on the face, abrasion on the knee and opined that cause of death was hemorrhagic shock due to fracture of skull bone and the death was homicidal in nature. Therefore, in view of the above ocular and medical evidence, involvement of the accused/appellant in crime in question is established.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9. Mr. Pandey, learned counsel for the appellant argued that from the evidence on record, it can safely be inferred that the accused was not having any intention to cause death of Jiyatbhan, therefore, offence against the accused does not travel beyond Section 304-II of the IPC.

10. On the other hand, Mr. Bajpai, learned P.L. for the State supported the impugned judgment of trial Court.

11. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have scrutinized the evidence available on record. PW-1 Surpati Bai, who is the eyewitness to the incident, has stated that the accused attacked deceased Jiyatbhan with fists and *chappal*, thereafter, she took him inside the house and next day morning when Jiyatbhan was being taken to the hospital, he died on the way. There is evidence on record that the accused attacked the deceased with fists and *chappal* as he was suspecting that the deceased is informer of the excise department and is giving information regarding his illicit distillation of liquor, therefore, looking to the manner in which the accused attacked the deceased and the fact that the deceased survived for the whole night without any treatment, it cannot be said that the accused attacked deceased Jiyatbhan with an intention to cause his death. Thus, we are of the considered opinion that the offence against the accused does not travel beyond Section 304-II of the IPC.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
KHAN	12. In the result, the appeal partly succeeds. Conviction of the accused/appellant under Section 302 of the IPC and sentence imposed thereon, are set aside. Instead thereof, he is convicted under Section 304-II of the IPC and sentenced to undergo R.I. for seven years. It is stated that the accused is in detention since 19.2.2000 and as such, he has already completed the jail sentence imposed upon him. It is, therefore, directed that the accused be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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